



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/575,933

11/15/2006

Vera Kreutzmann

12684.0018USWO

7049

23552 7590 10/28/2009
MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

BLIZZARD, CHRISTOPHER JAMES

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

10/28/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,933	Applicant(s) KREUTZMANN ET AL.	
	Examiner CHRISTOPHER BLIZZARD	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to amendment filed 8/03/09. As directed by the amendment claims 4, 5, 7 and 8 were amended, no claims was added or cancelled. Thus, claims 1-12 are presently pending in this application.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4-10, and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lester (3,097,645).

5. Regarding claim 1, Lester discloses an inhalation therapy device comprising a nebulising chamber (11), and an aerosol generator (fig.4) arranged to release an aerosol into the nebulising chamber (fig. 2) and which comprises a nozzle element (fig. 4). The nozzle element is comprised of a first part (14 or 16) attached to a second part (16 or 14) made of different materials (fig. 4, note crosshatching difference). Figure 4 of Lester clearly shows the first and second parts being made of different materials, it is inherent that one part will have different resilience from the other part. Even if Lester's

Art Unit: 3771

first and second parts do not have different resilience, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first part (14) out of a more resilient material so that it will be easily cleanable without a danger of breakage (column 2 lines 15-17).

6. Regarding claim 2, Lester discloses the first part (14) having a cross-section which tapers further than that of the second part (16) (fig. 4).

7. Regarding claim 4, Lester discloses that the first part (14) and the second part (16) are produced together and that the first part is molded on the second part (fig. 4, near #32).

8. Regarding claims 5 and 12, Lester discloses the first part (14) contains a nozzle outlet (29) (fig. 4).

9. Regarding claim 6, Lester discloses the nozzle has a third part (15), containing a nozzle outlet (26) (fig. 4).

10. Regarding claim 7, Lester discloses the nozzle has a third part (15) which has a cross section that tapers more than that of the first part (14) (fig. 4).

11. Regarding claim 8, Lester discloses the third part (15) is produced together with the first part (14) (fig. 4).

12. Regarding claim 9, Lester discloses the third part (15) is made of a different material than the first part (14) (fig. 4, note crosshatching difference). Figure 4 of Lester clearly shows the first and third parts being made of different material, it is inherent that one part will have different resilience from the other part. Even if Lester's first and third parts do not have different resilience however, it would have been obvious to one of

Art Unit: 3771

ordinary skill in the art at the time the invention was made to make the first part (14) out of a more resilient material so that it will be easily cleanable without a danger of breakage, see column 2 lines 15-17 of Lester.

13. Regarding claim 10, Lester discloses an inhalation therapy device comprising a nebulising chamber (11), and an aerosol generator (fig.4) arranged to release an aerosol into the nebulising chamber (fig. 2) and which comprises a nozzle element (fig. 4). The nozzle element is comprised of a first part (14) attached to a member (16) of the device which is made of a different material (fig. 4, note crosshatching difference). Since the first part and member are made of different materials they will have different resiliencies. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first part (14) out of a more resilient material so that it will be easily cleanable without a danger of breakage as taught by Lester (column 2, lines 15-17).

Claim Rejections - 35 USC § 103

14. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lester (3,097,645).

15. Regarding claims 3 and 11, Lester discloses that the first part is made of a thermoplastic (column 5, lines 23). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the first part (14) out of a thermoplastic elastomer in order to provide that advantage of providing a more durable part, see column 5, lines 23-31 of Lester.

Response to Arguments

Art Unit: 3771

16. Applicant's arguments filed 8/03/09 have been fully considered but they are not persuasive. Applicant argues that element 16, the first or second part, is not discussed by Lester and is extra reference numeral, further applicant argues that element 16 is not part of the nozzle, but Lester does discuss element 16 (column 2, line 39) and it is clear that it in figure 4 that is part of the entire nozzle as an assembly. Further concerning element 16 applicant argues that is it not constructed of a different material than element 14, but as previously mentioned it is evident in figure 4 that the materials are different due to different crosshatching.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER BLIZZARD whose telephone number is

Art Unit: 3771

(571)270-7138. The examiner can normally be reached on Monday thru Friday, 9:00AM -5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)2724835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CHRISTOPHER BLIZZARD/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771